

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

<b>ROY CURTIS ZORNES,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. CIV-05-257-HE</b>
	)	
<b>RON WARD,</b>	)	
	)	
<b>Respondent.</b>	)	

**REPORT AND RECOMMENDATION**

Petitioner, a prisoner appearing *pro se*, initiated this action by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that the petition be dismissed without prejudice.

By order dated March 11, 2005, the undersigned found that Petitioner had sufficient funds to prepay the filing fee and therefore Petitioner's application to proceed *in forma pauperis* was denied. Petitioner was advised that unless he paid the \$5 filing fee by March 31, 2005, this action would be subject to dismissal without prejudice to refiling. Local Civil Rule 3.3(e).

A review of the court file reveals that Petitioner has not paid the filing fee, requested an extension of time within which to pay, or demonstrated good cause for his failure to do so. Thus, the action is subject to dismissal without prejudice to refiling. Local Civil Rule 3.3(e).

RECOMMENDATION

Accordingly, the undersigned recommends that the petition for a writ of habeas corpus be dismissed without prejudice due to Petitioner's failure to pay the filing fee. The Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by May 3, 2005, in accordance with 28 U.S.C. §636 and Local Civil Rule 72.1. The Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal questions. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991). This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 13<sup>th</sup> day of April, 2005.

  
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BANA ROBERTS  
UNITED STATES MAGISTRATE JUDGE